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UNCLAS SECTION 01 OF 02 LIMA 005343

SIPDIS

SENSITIVE

DEPT FOR WHA/AND, WHA/EPSC, EB/CIP
COMMERCE FOR 4331/MAC/WH/MCAMERON
USTR FOR KENNETH SCHAGRIN, JONATHAN MCHALE, ARROW AUGEROT
FCC INTERNATIONAL BUREAU FOR ETALAGA

E.O. 12958: N/A
TAGS: ECPS ECON ETRD EINV PE
SUBJECT: PERU: 1377 TELECOM TRADE AGREEMENTS REVIEW

REF: A) State 218756 B) Lima 5073 C) Lima 2509

¶1. (SBU) Summary. After several years of anticipation and prolonged prodding by Post, Peru's telecommunications regulator Osiptel issued resolution No. 70 on November 21, 2005, which establishes a new mobile termination rate for calls made from pay phones and mobile phones. Under the new regulation, OSIPTEL will lower the mobile termination rate by 25 percent over the next three years, beginning in January 2006. By 2009, the new mobile termination rate will be set at between $0.1056-$0.0922, 54 percent lower than current mobile termination rates. Nextel Peru, the only U.S. provider of mobile services in Peru, applauds Osiptel's recent action to address Peru's high mobile termination rates but emphasized that Osiptel's regulation is not cost-oriented and takes too long to regulate prices. End Summary.

¶2. (U) In response to reftel A, Post contacted officials from Nextel to inform them of the 1377 review comment deadline and inquire about Nextel's position on Osiptel's recent regulation.

Recent Regulation of Mobile Termination Rates

¶3. (SBU) For years, Peru maintained one of the highest off-net mobile termination rates in South America, at an average of $0.23 per call. Post, working closely with Nextel, has repeatedly reminded Osiptel (Peru's telecommunication's regulator) of both its domestic and WTO obligations to ensure cost-oriented mobile termination rates. During the past year, Osiptel has endeavored to reduce the rate, issuing a temporary rate of $.20 in May (ref C) and publishing a regulation to lower rates to between $0.1056-$0.0922 by 2009 in November (ref B).

¶4. (U) Under the new regulation, Osiptel will retain the temporary rate of $0.2053 for all companies for the remainder of 2005. Beginning on January 1, 2006, OSIPTEL will implement the new rate, between $0.1804-$0.1770, which will decrease by 25 percent annually over a three-year period. By January 1, 2009, the mobile termination rates will average $.095 -- a 54 percent reduction. (Note: All costs are in dollars and do not include Peru's 19 percent value added tax. End Note.)

Company	Original Rate	Temp Rate Jun 2005	2006	2007	2008	2009
Nextel	$.250	$.2053	$.1772	$.1491	$.1210	$.0929
Telefonica	$.207	$.2053	$.1770	$.1487	$.1204	$.0922
America Movil/TIM	$.250	$.2053	$.1804	$.1555	$.1305	$.1056

Source: OSIPTEL

Nextel Argues Osiptel Still Not Compliant with WTO Obligations

¶5. (SBU) We spoke to Nextel Peru officials on December 19 to obtain Nextel's comments for the 1377 review. Alfonso de Obregoso, Vice President of Legal Regulatory Issues, informed us that while Nextel applauds Osiptel's efforts to reduce the mobile termination rate, Osiptel's new plan has several flaws. First, he noted that the new rate is not completely cost-oriented. The regulation establishes 2009 mobile termination rates based on 2004 costs. Because the final rate will not incorporate current costs, Nextel argues that OSIPTEL is still noncompliant with both its domestic and WTO obligations to ensure cost-oriented mobile termination rates. Second, even though Osiptel acknowledges that mobile termination rates, based on 2004 costs, should average $0.95, the new regulation mandates a three-year phase in for the new rate.

¶6. (U) According to de Obregoso, Nextel submitted its

comments for the 1377 review to USTR on December 16.

Comment

¶7. (SBU) It has taken Osiptel almost five years to regulate Peru's abnormally high mobile termination rate; the new regulation, unlike previous versions, is based on cost analysis. Osiptel made a politically expedient decision rather than immediately issue a more than 50 percent reduction in the mobile termination rate. We were, in fact, surprised when Osiptel issued Regulation No. 70, as it showed that Edwin San Roman, President of Osiptel, and his staff had the political will to stand up to politically savvy and well-connected Telefonica officials (many of whom are on the Osiptel Board), who argued that there was no need for regulation. However, by delaying the implementation of the new rates, Osiptel prolongs unnaturally high rates, thereby continuing to undermine competition in the mobile market and ultimately affecting Peru's long-term competitiveness in terms of access to information and overall business costs for small and medium enterprises. While we want Osiptel to implement the rate in a more timely fashion, we believe that Osiptel has done what it can to meet its domestic and international obligations without bowing to political pressure from Telefonica.

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